

UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
WASHINGTON, DC

In the Matter of:

DANIEL B. RAWLINGS

FAA Order No. 97-33

Served: October 21, 1997

Docket No. CP97WP0025

ORDER DIRECTING RESPONDENT TO FILE APPEAL BRIEF

The complaint in this case alleged that Respondent Daniel B. Rawlings (Rawlings) failed to heed instructions to turn off his laptop computer on an August 13, 1996, domestic flight, requiring a flight attendant to interrupt her pre-landing duties to explain the safety reasons for turning off the computer. The complaint sought a \$2,000 civil penalty for Rawlings' alleged violations of 14 C.F.R. §§ 91.11 (interfering with a crewmember in the performance of his or her duties) and 91.21(a)(1) (operating a portable electronic device on an aircraft operated by an air carrier).¹

Rawlings not only failed to file an answer to the complaint,² but he also failed to respond to several orders issued by Administrative Law Judge Ann Z. Cook instructing him to file an answer to the complaint. On August 28, 1997, Judge Cook dismissed the proceedings due to Rawlings' failure to respond the order to show

¹ The complaint was served on Rawlings on May 27, 1997.

² 14 C.F.R. § 13.209.

cause issued on July 23, 1997.³ Judge Cook's order of dismissal assessed Rawlings the \$2,000 civil penalty sought in the complaint.

On September 2, 1997, five days after Judge Cook issued her order dismissing the case, she received a memorandum from Rawlings responding to her order to show cause. In the memorandum, which is dated August 4, 1997 (exactly one week before the deadline Judge Cook gave for responding to her order to show cause), Rawlings indicated that he had not received either the complaint or the law judge's initial order advising him of the need to file an answer to the complaint.⁴ The law judge forwarded Rawlings' memorandum to the Administrator, stating that she no longer had jurisdiction over the case because she had already issued her initial decision.

Rawlings' memorandum can be construed as a notice of appeal from Judge Cook's order dismissing the proceedings. The Rules of Practice require a party who files a notice of appeal to perfect the appeal by filing an appeal brief. 14 C.F.R. § 13.233(c). Although ordinarily a party must file the appeal brief within 50 days of the initial decision, an exception will be made in this case because Rawlings' memorandum was not construed as a notice of appeal until today. As a result, Rawlings is given until **November 25, 1997**, to file an appeal brief. If Rawlings fails, without good cause, to meet this deadline, the law judge's order assessing a \$2,000 civil penalty will be affirmed.

³ In the show cause order, Judge Cook had ordered Rawlings to file an answer and a written explanation for his failure to file a timely answer.

⁴ On June 17, 1997, the law judge issued the initial order advising Rawlings of the requirement to file an answer to the complaint.

Enclosed are copies of the complaint and the Rules of Practice in FAA Civil Penalty Actions. Rawlings should pay particular attention to the rule dealing with appeal briefs (14 C.F.R. § 13.233(d)), and to the rule regarding answers (14 C.F.R. § 13.209). *Rawlings' appeal brief should address whether Rawlings had good cause for failing to file a timely answer to the complaint.*

Rawlings should file his appeal brief at the following address: Federal Aviation Administration, 800 Independence Avenue, SW., Room 924A, Washington, DC 20591, Attention: Appellate Docket Clerk. He should also serve Complainant with a copy of his appeal brief. Unless otherwise notified, Rawlings should address the envelope containing Complainant's copy as follows: Amy L. Barr, Esq., Office of the Regional Counsel, Federal Aviation Administration, P.O. Box 92007, Los Angeles, CA 90009-2007.

As for Complainant, Complainant is granted 35 days from the date of service of Rawlings' appeal brief to file a reply brief.

JANE F. GARVEY, ADMINISTRATOR
Federal Aviation Administration



VICKI S. LEEMON⁵
Manager, Adjudication Branch

Issued this 21st day of October, 1997.

⁵ Issued under authority delegated to the Chief Counsel and the Assistant Chief Counsel for Litigation by Memorandum dated October 27, 1992, under 49 U.S.C. § 322(b) and 14 C.F.R. § 13.202 (see 57 Fed. Reg. 58,280 (1992)) and redelegated by the Assistant Chief Counsel for Litigation to the Manager, Adjudication Branch, by Memorandum dated August 6, 1993.